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SUPREME COURT OF THE UNITED STATES

October Term 1964

No. 372

SAMUEL J. MARROSO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari To The United States Court of Appeals for the Fifth Circuit

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SAMUEL J. MARROSO
548 Pan American Bank Bldg.
Miami, Florida 33131

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SUPREME COURT OF THE UNITED STATES

October Term 19.....

No. _____

SAMUEL J. MARROSO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari To The United States Court of Appeals for the Fifth Circuit

TO the HONORABLE EARL C. WARREN, Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, SAMUEL J. MARROSO, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on May 5, 1964. (Appendix "A", infra, p. A1) A petition for rehearing was denied on July 8, 1964 (Appendix "C", infra, p. A5), and judgment of the Court issued as and for an Order of stay of mandate for a period of thirty (30) days from July 8, 1964. (Appendix "D", infra, p. A6)

OPINIONS BELOW

There was no opinion in the District Court. The Per Curiam opinion of the Court of Appeals (Bell, Circuit Judge, and Ingraham, District Judge. Judge Cameron, the third Judge constituting the Court originally hearing this case, died after argument but before decision.) is reported in 331 F. 2d 601 (5th Cir., 1964) and is printed for this Court's convenience at Appendix "C", infra, p. A3.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was made and entered the 5th day of May, 1964, and a copy thereof is appended to this petition at Appendix "A", infra, p. A1. The Per Curiam opinion of the Court, dated May 5, 1964, affirmed the District Court's judgment of conviction (R. pp. 7-8). (Appendix "B", infra, p. A3) The petition for rehearing was timely filed and was denied on July 8th, 1964. (Appendix "C", infra, p. A5) An Order of stay of mandate was granted for thirty (30) days from July 8th, 1964, due to the death of petitioner's original counsel. (Appendix "D", infra, p. A6)

This petition is filed within thirty days from the date of Order of stay of mandate. Proceedings toward the surrender of the petitioner have been stayed until decision by this Court.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1).

QUESTION PRESENTED

DID THE COURT OF APPEALS ERR IN SUSTAINING THE CONVICTION OF THE PETITIONER BY HOLDING THAT A PROSECUTOR AND AN F.B.I. AGENT COULD MAKE PREJUDICIAL AND INFLAMMATORY COMMENTS TO A JURY DURING A CRIMINAL TRIAL BY SPECIFICALLY REFERRING TO THE DEFENDANT'S STATEMENTS MADE IN THE COURSE OF AN F.B.I. INTERVIEW WITH THE DEFENDANT WHICH TOOK PLACE BEFORE THE DEFENDANT'S INDICTMENT OR ARREST WHEN THE DEFENDANT ASSERTED HIS CONSTITUTIONAL RIGHT UNDER THE FIFTH AMENDMENT AGAINST SELF-INCRIMINATION ON ADVICE OF COUNSEL?

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Amendment Five to the Constitution of the United States provides as follows:

"AMENDMENT V — CAPITAL CRIMES: DUE PROCESS

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be

subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

"Amendment V. Grand Jury Indictment for Capital Crimes

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment Six to the Constitution of the United States provides as follows:

"AMENDMENT VI — JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district

wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

The Federal statute involved is Section 3481 of Title 18, United States Code which provides:

"§ 3481. Competency of accused

In trial of all persons charged with the commission of offenses against the United States and in all proceedings in courts martial and courts of inquiry in any State, District, Possession or Territory, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him. June 25, 1948, c. 645, 62 Stat. 833.

STATEMENT

The judgment of the Court of Appeals sought to be reviewed affirmed a judgment convicting the petitioner of conspiring to violate sections 371 and 2314 of Title 18, U. S. Code.

The indictment contained two counts; the first count charged the petitioner and others with transporting counterfeit securities in foreign commerce, and the second

count charged the defendants therein with conspiring so to do (R. 2). The petitioner was tried by jury and found guilty of both the substantive count and the conspiracy count. The petitioner was sentenced to three (3) years confinement and three (3) years probation (R. 7-8).

The gravamen of the reversible error allowed during trial in the District Court was the "prejudicial and inflamatory" statements made by the prosecutor and an F.B.I. agent against the petitioner. The petitioner was thereby denied his constitutional rights under the Fifth Amendment, right against self-incrimination, the Sixth Amendment, right to a fair trial, and 18 U.S.C.A. § 3481, which prohibits prejudicial comment with respect to a defendant's silence under these facts.

The petitioner, prior to indictment and arrest in the instant case, was interviewed by an F.B.I. agent. During this interview the petitioner asked to be excused so that he might confer with his counsel, whereupon the petitioner returned and refused to answer any further questions on advice of counsel.

During this criminal jury trial in the District Court, the prosecutor in his **opening statement** referred specifically to the petitioner's refusal to answer the F.B.I. agent's questions on advice of his counsel. Subsequently, when the F.B.I. agent testified during the trial he also commented specifically on the petitioner's refusal to answer the questions on advice of his counsel.

The petitioner's counsel during trial objected to these comments and motioned for a mistrial when the prosecutor (R. 26) and the F.B.I. agent (R. 448) made these

"prejudicial and inflammatory" comments. The District Court overruled these objections, but was never able to cure their fatal effect upon the jury. The petitioner renewed his motion for a mistrial at the conclusion of the defendant's case—but it was denied (R. 596). The petitioner was thereby never afforded the right to a "fair trial", and was subjected to these flagrant violations of justice.

The Court of Appeals affirmed the District Court in a Per Curiam opinion (Appendix "B", infra, p. A3).

REASONS FOR ALLOWANCE OF THE WRIT AND ARGUMENT AMPLIFYING REASONS

1. The decision herein sustaining conviction of the defendant is a violation of the defendant's rights under the Fifth Amendment to the United States Constitution in that the defendant has the right against self-incrimination, the right to maintain silence, and the right to be free from "prejudicial and inflammatory" comments with respect to these rights.

2. Title 18 U.S.C.A. § 3481 gives the defendant the right not to have the fact that he failed to testify or maintained silence commented upon during jury trial. The defendant's rights were breached by the "prejudicial and inflammatory" comments made by the prosecutor and F.B.I. agent.

3. The decision herein sustaining conviction of the defendant is a violation of the defendant's rights under the Sixth Amendment to the United States Constitution,

in that the defendant has the right to a **fair trial**, which was denied him in the instant case.

4. The decision herein is in conflict with the decisions of this Court in **Wilson** v. **United States**, 149 U. S. 60, 13 S. Ct. 765, and **Stewart** v. **United States**, 366 U. S. 1, 81 S. Ct. 941 (1961); in that all comment in the presence of the jury upon the defendant's rights against self-incrimination is forbidden.

5. The decision herein is in conflict with the decisions of this Court in **Counselman** v. **Hitchcock**, 142 U. S. 547, 12 S. Ct. 195 (1892) where this Court said that the right against self-incrimination applies to "any investigation", and in **McCarthy** v. **Arndstein**, 266 U. S. 34, 45 S. Ct. 16 this Court said that the privilege was not dependent on the "nature of the proceeding".

6. The decision herein is at variance and in conflict with the decision of the Fifth Circuit in **De Luna** v. **United States**, 308 F. 2d 140 (5th Cir. 1962) where the Fifth Circuit held, **inter alia**, that the Fifth Amendment right against self-incrimination also requires the right to freedom from prejudicial comment during trial concerning the exercise of the right against self-incrimination.

The Court of Appeals erred in sustaining the conviction of the petitioner by holding that a prosecutor and an F.B.I. agent could make "prejudicial and inflammatory" comments to a jury during a criminal trial, by referring specifically to the defendant's statements made in the course of an F.B.I. interview with the defendant which took place before the defendant's indictment or arrest when the defendant asserted his constitutional right under

the Fifth Amendment against self-incrimination on advice of counsel.

The question presented to this Honorable Court can be easily resolved by a logical progression of the applicable law in the area of a defendant's constitutional and statutory rights during a criminal jury trial.

The points to be argued and resolved are:

1. Does the defendant in a Federal criminal jury trial, as in the instant case, have the right to remain silent, under the Fifth Amendment right against self-incrimination? Answer—Yes

2. Does the Fifth Amendment right against self-incrimination extend not only to testimony "in any investigation" but extends the right or privilege far beyond so that it is "not dependent on the nature of the proceedings"? Answer—Yes

3. Does Section 3481 of Title 18 U. S. Code provide that "the person charged shall, at his own request, be a competent witness" and "(h)is failure to make such request shall not create any presumption against him"? Answer—Yes

4. Does the Fifth Amendment, supra, together with Section 3481 of Title 18 U. S. Code, give the petitioner in the instant case an absolute right to silence in any investigation or proceeding should he exercise the option and does it also carry with it the right to silence when asserted including complete freedom from "prejudicial and in-

flammatory" comment and harmful presumption and inferences? Answer—Yes

5. When the petitioner's "bundle" of rights outlined above has been violated, as the facts show in the instant case, can this Court say that the petitioner has had his right to a "fair trial" enforced as required by the Sixth Amendment? Answer—No

6. Therefore, it was reversible error to allow the prosecutor and the F.B.I. agent to make "prejudicial and inflammatory" comments during a Federal criminal jury trial by referring specifically to the petitioner's prior statements made in the course of an F.B.I. interview with the petitioner, which took place before the petitioner's indictment or arrest, when the petitioner asserted his constitutional right under the Fifth Amendment against self-incrimination.

With reference to the Fifth Amendment, a working maxim which once meant that no one shall be questioned until he has been first accused now means that no one shall ever be required to answer about his crime. McCORMICK ON EVIDENCE § 120 (1954)

The Fifth Amendment "must have a broad construction in favor of the right which it was intended to secure". **Counselman v. Hitchcock**, 142 U. S. 547, 562 (1892).

In **DeLuna v. United States**, 308 F. 2d 140, 144 (5th Cir. 1962) the Court of Appeals said:

"The history of the development of the right of

silence is a history of accretions, not of an avulsion.'"

Thus, it has been held by this Honorable Court in **Counselman** v. **Hitchcock**, supra, that:

> "* * * * a person should not be compelled * * * in any investigation, to give testimony that might tend to show that he himself had committed a crime."

Again, in **McCarthy** v. **Arndstein**, 266 U. S. 34, 45, S. Ct. 16, this Court has flatly asserted that the privilege or right against self-incrimination is not dependent upon the "nature of the proceeding" in which it is asserted.

As we saw in COUNSELMAN and McCARTHY above the Fifth Amendment privilege is not limited to criminal proceedings. Nor is it limited to witnesses. The Third Circuit Court of Appeals said in **United States** v. **Housing Foundation of America**, 176 F. 2d 665 (3rd Cir, 1949) that the right of a witness not to give incriminating answers and the right of an accused not to take the stand must be distinguished, although both come within the protection of the Fifth Amendment.

We respectfully submit that the language and history of the Fifth and Sixth Amendments to the Constitution and section 3481 of Title 18 U. S. Code, is the language of **rights** and **freedoms**. These are not special benefits which require a strict construction.

Justice Clark, in **Slochower** v. **Board of Higher Edu-**

cation, 350 U. S. 551, 557 (1956) said that even in situations not criminal, the:

> "* * * privilege against self incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a confession of guilt or a conclusive presumption of perjury."

Therefore, we can readily see that it makes no difference whether the "prejudicial and inflammatory" comments come from a co-defendant's counsel, the Court or the prosecutor. The crucial test which must be applied is, WHAT EFFECT DID THE COMMENT HAVE ON THE JURY? If the privilege or right against self-incrimination is to be effective, and if we hope to preserve the presumption of innocence of the accused, then we must follow the Constitution, the statutes and the cases and prohibit "prejudicial and inflammatory" comments. To emphasize by comment the fact that the petitioner relied upon his Fifth Amendment right confused the jury as to the presumption of innocence of the petitioner.

In **Grunewold** v. **United States**, 353 U. S. 391 (1957), Justice Harlan, speaking for the majority of this Honorable Court, and referring to the meaning and history of the Fifth Amendment, said:

> "* * * one of the basic functions of the privilege * * * to protect 'the innocent who otherwise might be ensnared by ambiguous circumstances' (Slochower)"

In a concurring opinion Justice Black said:

> "(There are) no special circumstances that would justify use of a constitutional privilege to discredit or convict a person who asserts it. The value of these constitutional privileges is largely destroyed if persons can be penalized for relying on them."

Justice Frankfurter in **Johnson** v. **United States**, 333 U. S. 46 (1947) said:

> "Federal judges are not referees at prize fights but functionaries of justice."

Therefore, looking at the judge and the accused, the judge is charged with the responsibility of protecting the accused by making certain the trial is the "fair" one demanded by the Constitution. The narrow view of the District Court and the Court of Appeals in the instant case leads to a **complete nullification** of the petitioner's constitutional rights.

The petitioner had the constitutional right to expect that the jury would have no presumption or inference of guilt from the exercise of his right not to answer any further questions during the interview with the F.B.I. agent. **Bradford** v. **United States**, 130 F. 2d 630 (5th Cir, 1942) Cert. denied, 317 U. S. 683. The petitioner, Marroso. has been denied his constitutional rights.

Above all, the petitioner has the right to expect that all comment in the presence of the jury upon his omission to answer any further questions during the F. B. I.

interview would be forbidden. **Wilson v. United States, 194 U. S. 60 (1893); Stewart v. United States, 366 U. S. 1 (1961).**

Ironically, the District Court assumed that the instructions to the jury would neutralize the effect of the comments made by the prosecutor and the F.B.I. agent. But once again we must consider the effect upon the jury. At the very beginning of the trial the prosecutor for the United States of America made these "prejudicial and inflammatory" comments. The effect on the jury was fatal at this point. After all, this was the government speaking to the jury. The conclusion of the jury then was, "Why did Marroso refuse to talk — He must be guilty."

Then, to make a bad situation worse, if possible, the F.B.I. agent, made the same "prejudicial and inflammatory" comments to the jury. Marroso did not have a chance; the government might just as well have put him in prison without a trial, because the trial, at this point, was no more than a "farce". A careful study of the record will prove to this Honorable Court that the government did not prove their case against the petitioner and he should have been acquitted with defendant Green.

The District Court did not attempt to cure the fatal reversible error committed by the prosecutor and the F.B.I. agent. The only slight mention made in the Court's instruction to the jury was weak and feeble. The District Court said (R. 610):

> "No presumption of guilt and no inference of any kind is to be cast upon any of the defendants

> because they did not take the stand or because they did not produce evidence, or because they did not produce as much evidence as did the government."

We find out of 28 pages of instructions to the jury (R. 605-633), the District Court devoted a mere 46 words in this regard, which in fact were not even on point with the "prejudicial and inflammatory" comments made by the prosecutor and the F.B.I. agent. Hence, we can say there was no instruction to the jury in an effort to neutralize the effect of these fatal comments upon the members of the jury. Without any instruction to the jury to undo the prejudicial effect of the reference specifically made to the petitioner's exercise of his right against self-incrimination during the F.B.I. interview, by both the prosecutor and the F.B.I. agent, the **seed of presumption of guilt was well planted.** We should not be surprised that it **germinated.**

In **Krulewitch** v. **United States, 336** U. S. **440** (1949) Justice Jackson said:

> "(T)he naive assumption that prejudicial effects can be overcome by instructions to the jury * * * all practicing lawyers know to be unmitigated fiction."

To the same effect is the statement by Judge Learned Hand in **Nash** v. **United States,** 54 F. 2d **1006, 1007** (2 Cir 1932), when he said:

> "(This) recommendation to the jury * * * (is) a mental gymnastic which is beyond, not only their power, but anybody's."

It is a weak and shallow argument to say that in any event this was merely **harmless error.** The government was not able to prove the guilt of the petitioner. The **record** shows no guilt on the part of the petitioner. The harmless error rule has restricted applicability in criminal cases. This is so, because the petitioner has a carefully guarded right to have his guilt adjudged by a jury.

The Court of Appeals did not face the question of error squarely in their Per Curiam opinion which affirmed the District Court. In fact, they confusedly said:

> "This was no more than evidence of surrounding circumstances tending to illuminate the principal fact in such a way as to reflect the entire transaction or conversation and place the whole in a true light."

When the great weight of legal authority in this country stresses the closely guarded constitutional and statutory rights afforded an accused in a criminal trial, the denial of these very same rights belonging to the petitioner, as in the instant case, is an affront to this Honorable Court and every American who takes pride in our judicial system and our Constitution.

How the Court of Appeals could hold that these "prejudicial and inflammatory" comments were admissible because they tended to "illuminate the principal fact in such a way as to reflect the entire transaction. . . . " is a completely unconscionable position. Nothing was "illuminated", no "principal fact" was brought to light, except the fact that by virtue of their admissibility the peti-

tioner was denied his constitutional right to a "fair trial" under the Sixth Amendment.

This is so because the petitioner was denied his Fifth Amendment right against self-incrimination and his statutory right under section 3481 of Title 18 U. S. Code.

The Court of Appeals Per Curiam opinion quoted above is as out of context to the question presented to that Court on appeal in the instant case, as that quote was when it was used by the government in their brief for appellee in the instant case (Brief for Appellee, p. 12).

The government cites **Beaver v. Taylor, 1 Wall. 637, 642** in their Brief for Appellee as authority for that bit of "legal mumble jumble". By repeating that innocuous sentence the Court of Appeals has affirmed by the use of vague generalities and confusion the denial of an accused his constitutional right to a "fair trial" and has overturned our entire theory of law, order and justice.

In **Massiah v. United States, 84 S. Ct. 1199, 1202** (1964), this Honorable Court in dealing with the same basic constitutional principals and rights of an accused, but in a different fact pattern, solidly established "guide lines" and "ground rules" for a "fair trial" when at 1202 this Court said:

> "Here we deal not with a state court conviction, but with a federal case, where the specific guarantee of the Sixth Amendment directly applies."

This not only applies to the right of "assistance of coun-

sel", but to all constitutional rights of an accused. The petitioner here has been denied his basic rights.

The government calls the error an "insignificant trifle" (Brief for Appellee, p. 14). Apparently the Court of Appeals was inclined to take this narrow view which would lead to complete nullification of the petitioner's constitutional rights.

The error was properly preserved for appeal and in the circumstances of this case the error is serious and reversible.

CONCLUSION

The writ of certiorari should be granted.

Respectfully submitted,

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Attorney for
SAMUEL J. MARROSO,
Petitioner
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Miami, Florida 33131

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that several copies of the above and foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was on this the 7th day of August, 1964, mailed to the Hon. William A. Meadows, United States Attorney for the Southern District of Florida, United States Courthouse, Miami, Florida; to Jerome Nelson, Attorney, Dept. of Justice, Washington 25, D. C.; and to the Solicitor General, Department of Justice, Washington 25, D. C.

J. EDWARD WORTON

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1963

No. 20236

D. C. Docket No. 399-62-Cr-EC

SAMUEL J. MARROSO and JOHN JACOB SAMARIN,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeals from the United States District Court for the Southern District of Florida.

Before BELL, Circuit Judge and INGRAHAM*, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of

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*Judge Cameron, the third judge constituting the Court originally hearing this case, died after argument but before decision. Consequently, this decision and opinion is rendered by a quorum pursuant to Title 28 USCA, Sections 46(c) and (d).

the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgments of conviction of the said District Court in this cause be, and the same are hereby affirmed.

Issued as Mandate: May 5, 1964

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20236

SAMUEL J. MARROSO and JOHN JACOB SAMARIN,

Appellants,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(May 5, 1964.)

Before BELL, Circuit Judge and INGRAHAM,* District Judge.

PER CURIAM: Appellants were convicted of a conspiracy to transport counterfeit securities in foreign commerce in violation of 18 USCA, § 371 and 18 USCA,

*Judge Cameron, the third judge constituting the Court originally hearing this case, died after argument but before decision. Consequently, this decision and opinion is rendered by a quorum pursuant to Title 28 USCA, § 46 (c) and (d).

§ 2314. Both appellants contend their convictions are invalid, because the lower court erred in admitting into evidence post conspiracy statements of co-defendants. In addition, the appellant Marroso contends that the lower court erred in failing to grant his motion for mistrial because of the admission into evidence of the testimony of an F.B.I. agent concerning the termination by Marroso of an interview with the agent on advice of counsel.

After a careful examination of the entire record, we find to the contrary. The evidence sustained the conviction of both appellants. A common purpose and plan may be inferred from a development and a collocation of circumstances. **Glasser v. United States**, 315 U.S. 60 (1942). It is well settled that, in a joint trial, post conspiracy declarations by co-defendants are admissible against the declarant under proper limiting instructions. **Delli Paoli v. United States**, 352 U.S. 232 (1957). The court gave precise limiting instructions both prior to the receipt of the statements and in the final charge.

Lastly, it was not error to fail to grant the motion for mistrial because of the admission into evidence of the testimony of the F.B.I. agent concerning his interview with Marroso wherein Marroso answered certain questions and then refused to answer further questions on advice of counsel. This was no more than evidence of surrounding circumstances tending to illuminate the principal fact in such a way as to reflect the entire transaction or conversation and place the whole in a true light.

The convictions are AFFIRMED.

APPENDIX C

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20,236

SAMUEL J. MARROSO and JOHN JACOB SAMARIN,
Appellants

v.

UNITED STATES OF AMERICA,
Appellee

Appeals from the United States District Court for the Southern District of Florida

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ON PETITIONS FOR REHEARING
(July 8, 1964)

Before BELL, Circuit Judge, and INGRAHAM, District Judge

PER CURIAM:

It is ORDERED that the separate petitions for rehearing filed by appellants, Samuel J. Marroso and John Jacob Samarin, in the above entitled and numbered cause be, and they are, hereby DENIED.

APPENDIX D

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 20,236

SAMUEL J. MARROSO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER

THIS CAUSE, coming on to be heard upon the application of substitute counsel for a Stay of Mandate until substitute counsel may examine into the file of the Appellant, SAMUEL J. MARROSO, and the Court being advised in the premises, it is

ORDERED:

That the Mandate shall be stayed for a period of 30 days from the 8th day of July, 1964.

DONE and ORDERED at New Orleans, Louisiana, this 30th day of July, 1964.

JOE INGRAHAM